

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

Docket No. **FIFRA-08-2004-0014**

IN THE MATTER OF:)	
)	
CHS, Inc.)	COMPLAINT AND EXPEDITED
P.O. Box 64089)	SETTLEMENT AGREEMENT (CESA)
St. Paul, MN 55164-0089)	
)	
Respondent)	
_____)	

A. JURISDICTION

1. This complaint and Expedited Settlement Agreement (“CESA”) are issued to CHS, Inc. (“Respondent”) for fifteen violations of FIFRA 12(a)(2)(L).
2. The undersigned Environmental Protection agency (“EPA”), Region 8 officials issue this CESA under the authority vested in the Administrator of EPA by Section 14(a)(1) of FIFRA, 7 U.S.C. § 1361(a).
3. This section authorizes EPA to bring an action under Section 14(a) (1) of FIFRA, 7 U.S.C. § 1361(a)(1), for civil administrative penalties against Respondent who has violated, or is in violation of, a requirement or prohibition of FIFRA.

B. ALLEGED VIOLATION

1. Respondent is a “person” within the meaning of Section 2(s) of FIFRA, 7 U.S.C. Section 136(s), and is therefore subject to regulation.
2. Respondent is a “distributor/seller” as defined by Section 2(gg) of FIFRA 7 U.S.C. Section 136(gg) and a “producer” as defined by Section 2(w) of FIFRA 7 U.S.C. 136(w).
3. Respondent produces, sells and distributes “pesticide(s)” within the meaning of Section 2(u) of FIFRA, 7 U.S.C. Section 136(u).
4. EPA reviewed its records and determined that the following facilities owned and operated by Respondent had either not submitted a “Pesticide Report for Pesticide-Producing and Device-Producing Establishments pursuant to Section 7 FIFRA, 7 U.S.C. 136(e) or had not submitted an accurate Report:

- a. CHS, Inc., Miles City, MT,
EPA Establishment No. 074600-MT-004, for calendar year 2003;
 - b. CHS, Inc., Geraldine, MT
EPA Establishment No.062717-MT-001, for calendar year 2003;
 - c. CHS, Inc., Richey, MT
EPA Establishment No. 048013-MT-021, for calendar years 2001
and 2003;
 - d. CHS, Inc., Gettysburg, SD
EPA Establishment No. 062125-SD-001, for calendar year 2001;
 - e. CHS, Inc., Devils Lake, ND
EPA Establishment No. 958766-ND-001 for calendar year 2003;
 - f. CHS, Inc., Faulkton, SD
EPA Establishment No. 058972-SD-002 for calendar year 2003;
 - g. CHS, Inc., Brockton, MT
EPA Establishment No. 048013-MT-019, for calendar year 2003;
 - h. CHS, Inc., Circle, MT
EPA Establishment No. 048013-MT-018, for calendar year 2003;
 - i. CHS, Inc., Lakota, ND
EPA Establishment No. 58766-ND-004, for calendar year 2003;
 - j. CHS, Inc., Pierre, SD
EPA Establishment No. 68928-SD-001, for calendar years 2000, 2001,
and 2002; and
 - k. CHS, Inc., Phillips, SD
EPA Establishment No. 064732-SD-001, for calendar years 2001
and 2002.
5. Under Section 12(a)(2)(L), an annual report is required by March 1st for the
previous year.
 6. Upon consideration of the nature, circumstances, extent and gravity of the
violation and Respondent's ability to continue in business, the size of
Respondent's business, prior history of compliance, degree of culpability, lack of
economic benefit resulting from the violations, **its good faith and immediate
effort to comply once informed of the violations**, other matters as justice may
require, and upon consideration of the entire record herein, EPA offers this CESA

under its expedited enforcement procedures in order to settle the violation based upon the findings noted above, for the total civil penalty amount of **fifty seven thousand seven hundred fifty dollars (\$57,750.00)**.

C. CIVIL PENALTY

1. The Respondent signing below admits that EPA has jurisdiction over the subject matter alleged in the CESA, neither admits nor denies the specific factual allegations contained in the CESA, and consents to the assessment of the penalty as stated in section B.6, above.
2. Within 30 days of receiving the Final Order in this matter, Respondent agrees and consents that Respondent will pay a civil penalty of by sending a certified or cashiers check, payable to "Treasurer, United States of America" to the following address:

Mellon Bank
EPA Region 8
(Regional Hearing Clerk)
P.O. Box 360859M
Pittsburgh, PA 15251

- a. The check shall reference the name and address of Respondent's facility and the EPA docket number of this action.
- b. A copy of the cashiers or certified check shall be sent simultaneously to:

Tina Artemis
Regional Hearing Clerk
U.S. EPA, Region 8 (8RC)
999 18th Street, Suite 300
Denver, CO 80202-2466

(and) Brenda L. Morris
Enforcement Attorney
U.S. EPA, Region 8 (8ENF-L)
999 18th Street, Suite 300
Denver, CO 80202-2466

3. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. **Interest will therefore begin to accrue on a civil or stipulated penalty if the penalty is not paid when due.** Interest will be assessed at the United States Treasury tax and loan rate in accordance with 4 CFR § 102.13(c). A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorney fees. In addition, a penalty charge of six (6) percent per year will be assessed on any portion of the debt that remains delinquent more than ninety (90) days after payment is due. Any such penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid. 4 CFR §§ 102.13(d) and (e).

D. TERMS AND CONDITIONS

1. Nothing in this CESA shall be construed as a waiver by EPA of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this CESA.
2. The undersigned representative of Respondent certifies that he/she is fully authorized to enter into the terms and conditions for this CESA and to bind the party he/she represents to the terms and conditions of this CESA.
3. The parties agree to submit this CESA to the Regional Judicial Officer, with a request that it be incorporated into a Final Order.
4. Each party shall bear its own costs and attorneys fees in connection with this matter.
5. Respondent has the right to request a hearing on any material fact or on the appropriateness of the penalty contained in this CESA pursuant to 40 CFR § 22.15. Upon signing and returning of this CESA to EPA, the Respondent waives the opportunity for a hearing pursuant to Section 554 of the Administrative Procedure Act, 5 U.S.C. §554.
6. This CESA, upon incorporation into a Final Order, applies to and is binding upon EPA and upon Respondent and Respondent's parent, affiliates, heirs, successors and assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this CESA. This CESA, upon incorporation into a Final Order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and full civil settlement of the specific violation alleged in the CESA.

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8, Office of Enforcement, Compliance
and Environmental Justice, Complainant.**

Date: 9/28/04 By: SIGNED
Elisabeth Evans
Director
Technical Enforcement Program

Date: 9-28-04 By: David J. Janik
Michael T. Risner, Director
David Janik, Supervisor
Legal Enforcement Program

Date: 9/30/04 By: SIGNED
Brenda L. Morris, Attorney
Legal Enforcement Program

**CHS, INC.
Respondent.**

Date: 9/29/04 By: SIGNED
Peter Mutschler
(Printed or Typed Name of Signatory)

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **COMPLAINT AND EXPEDITED CONSENT AGREEMENT/FINAL ORDER** in the matter of **CHS, INC., DOCKET NO.: FIFRA-08-2004-0014** was filed with the Regional Hearing Clerk on September 30, 2004.

Further, the undersigned certifies that a true and correct copy of the document was delivered to Brenda Morris, Enforcement Attorney, U.S. EPA - Region 8, 999 18th Street - Suite 300, CO 80202-2466. True and correct copies of the aforementioned document was placed in the United States mail certified/return receipt on September 30, 2004, to:

Mr. Peter Mutschler
CHS, Inc.
P.O. Box 64089
St. Paul, MN 55164-0089

September 30, 2004

SIGNED

Tina Artemis
Regional Hearing Clerk

**THIS DOCUMENT WAS FILED IN THE REGIONAL HEARING CLERK'S OFFICE
ON SEPTEMBER 30, 2004.**